

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID R. GLOVER,) 8:04CV561

)

Plaintiff,)

)

vs.)

)

JO ANNE B. BARNHART,)

Commissioner of Social Security)

Administration,)

)

Defendant.)

**MEMORANDUM
AND ORDER**

This matter is before the court upon Plaintiff's application for attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (filing 23). The defendant has filed a response (filing 24) stating that she has no objection to the application and requesting that the court award fees in the amount of \$4,283.56, the amount requested by Plaintiff, which represents 28.1 hours of work at \$152.44¹ per hour.

The court has determined that Plaintiff was indeed the prevailing party in this action, as this action was remanded to the Secretary for further action; that the application for fees was filed in a timely fashion²; and that the position of the Commissioner was not substantially justified. Plaintiff therefore is entitled to an award of reasonable attorney fees.

¹The maximum hourly fee of \$125.00 specified in 28 U.S.C. § 2412(d)(1)(D)(2)(A) was adjusted to account for inflation (Ex. 4 to Filing 23).

²An EAJA fee application based on a district court judgment remanding a case pursuant to sentence four of 42 U.S.C. § 405(g) must be filed within 90 days of the sentence-four judgment. Shalala v. Schaefer, 509 U.S. 292, 302 (1993).

Plaintiff's application also requests reimbursement of the filing fee in the amount of \$150.00. That request will be denied without prejudice to Plaintiff filing a verified bill of costs as required by NECivR 54.1(b).

IT IS ORDERED:

1. Plaintiff's application for attorneys fees pursuant to the Equal Access to Justice Act (filing 23) is granted as to the requested \$4,283.56 in attorney fees;
2. Plaintiff's application for reimbursement of the filing fee in the amount of \$150.00 is denied without prejudice to Plaintiff filing a verified bill of costs as required by NECivR 54.1(b); and
2. By separate document, the court shall enter judgment for Plaintiff and against Defendant providing that Plaintiff is awarded attorney fees in the amount of \$4,283.56.

September 29, 2005.

BY THE COURT:
s/ *Richard G. Kopf*
United States District Judge

